

H.R. 4411: The Internet Gambling Prohibition and Enforcement Act

Section-by-Section Analysis

Goodlatte-Leach legislation to combat Internet gambling

Section 1: Short Title and Table of Contents

The Act may be cited as the “Internet Gambling Prohibition and Enforcement Act.”

There are three titles in the bill: (I) Modernization of the Wire Act; (II) Regulations to prevent payments for unlawful Internet gambling, and (III) Cooperation with foreign governments.

Section 101: Definitions (Wire Act)

What it does: Adds new definitions to 18 U.S.C. 1081 (definitions applying to the Wire Act and Gambling Ships Act), including: “bets or wagers”, “information assisting in the placing of bets or wagers”, “communication facility”, “gambling business” and “person” (including governmental entities as possible violators of the act).

Why it's there: The current Wire Act does not define “bets or wagers” or “information assisting in the placing of bets or wagers,” leaving the definition of the core prohibition ambiguous. It is important that the scope of criminal laws be clear, so “bets or wagers” is defined to broadly cover all activities commonly considered “gambling” but exclude non-gambling activities such as purchasing securities and stock options, or playing certain fantasy sports games. The term “information assisting in the placing of bets or wagers” is broadly defined to include any information that enables or facilitates a bet or wager, but not legitimate news reporting or advertising of legal activities. The term “communication facility” is added and defined to cover more Internet technologies, such as wireless infrastructures that increasingly make up the Internet. The term “person” is defined to make clear that governmental entities, such as State lottery commissions, are also required to comply with this law.

How it compares: These definitions are similar to the Goodlatte bills from 2006 and 2001.

Section 102: Modification of Existing Prohibition

What it does: Subsection (a) clarifies that the prohibition on using a communication facility to transmit bets or wagers, information assisting in the placing of bets or wagers, or related money or credit, applies to all types of bets or wagers and prohibits a gambling business from accepting credit, electronic fund transfers, checks and other forms of payment related to a bet or wager or information assisting in the placing of a bet or wager. The criminal penalty is increased from 2 years to 5 years.

Subsection (b) preserves language from the original Wire Act (with some clarifying changes) permitting the transmission of information assisting in the placing of bets or wagers in situations where the information relates to legal, non-remote bets or wagers.

Subsection (c) is a States’ rights provision which allows the transmission of purely intra-state bets or wagers (or assisting information) where the gambling business (and its agents) and

the person placing the bet are physically located within the borders of the same State (or Indian tribe), the transmission is expressly permitted under the State (or tribal) law, and the State or tribal law requires a secure and effective system to make sure that no minors or persons physically located outside of the state are participating.

Subsections (d) and (e) clarify that nothing in the Wire Act overrides State criminal law or the Professional and Amateur Sports Protection Act.

Subsection (f) authorizes Federal, State, tribal, and local law enforcement to send written notification to a common carrier (such as a telephone or cable company) to inform them that a customer is using the service for illegal gambling transmissions. The common carrier is then required to discontinue service to the customer, and is protected from being sued by any person for following this order.

Why it's there: Subsection (a) solves the ambiguities in the current Wire Act by removing language that could be interpreted to cover sports gambling only, and by modifying language to incorporate modern communication technology. Subsections (b), (d) and (f) repeat the current language of the Wire Act. Subsection (c) is necessary to preserve State rights to regulate gambling within State borders, especially now that the Wire Act clearly applies to governmental entities. Subsection (e) is required to harmonize the new Wire Act with the 1992 Professional and Amateur Sports Protection Act.

How it compares: The text of section 102 is generally the same as the Goodlatte bill as reported from Judiciary on May 25, 2006. The language of the Manager's amendment has been rearranged or modified slightly in a few places for greater clarity, but without changing the intent of the original Goodlatte bill.

Section 103: Authorization of Civil Enforcement

What it does: Creates a new section of the Wire Act (section 1085) to authorize the U.S. Attorney General and State Attorneys General (and in some cases, tribal authorities) to pursue civil remedies, including a preliminary injunction or injunction against any person (except a financial transaction provider), to prevent or restrain a violation of the Wire Act. It clarifies that the bill does not alter, supersede or otherwise affect the Indian Gaming Regulatory Act; allows the U.S. Attorney General to enjoin insured depository institutions to freeze or seize accounts of gambling businesses that violate the Wire Act; and generally limits the liability of an interactive computer service to the removal or disabling of access to an online site violating this section, upon proper notice.

Why it's there: The injunctive remedies allow law enforcement to take action to disable access to unlawful Internet gambling in situations where the criminal violators are offshore and out of reach. For instance, Internet service providers may be required to remove advertisements or shut down accounts for illegal websites, or a billboard company may be required to remove a billboard advertisement for an illegal website. Injunctions generally are not authorized to the extent they would overlap regulatory enforcement, to avoid conflicting obligations for financial institutions that usually operate across many different jurisdictions, but the Federal government may freeze or seize gambling business bank accounts.

How it compares: This section is generally the same as the injunctive section of the Leach bill (section 5365), except the U.S. Attorney General's authority to freeze or seize bank accounts is new, and a few other small text changes were made to "fit" the section into the Wire Act.

Section 104: Authorization of Appropriations

What it does: Authorizes \$10 million per year for the next 3 years, to be appropriated to the Department of Justice for investigations and prosecutions of violations of the Wire Act.

Why it's there: These appropriations would facilitate active enforcement of the law.

How it compares: This section is identical to the Goodlatte bill as reported from the Judiciary Committee.

Sections 105 and 106: Rule of Construction and Sense of Congress

What it does: Provides that nothing in this Act shall be construed to prohibit any activity that is allowed under the Interstate Horseracing Act, and the Act is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes. Clarifies that nothing in the Act may be construed to preempt any State law prohibiting gambling.

Why it's there: There is currently a dispute between the Department of Justice and the horseracing industry as to whether the Wire Act — a 1961 criminal statute — overrides the Interstate Horseracing Act — a 1978 civil statute — or vice versa. The language adopted by the Judiciary Committee has been approved by both sides of this dispute as maintaining the status quo, allowing the courts to settle the issue another day.

How it compares: These sections were added to the Goodlatte bill in the Judiciary Committee markup in May. The horseracing provisions were part of Goodlatte's substitute amendment. The paragraph clarifying that State law shall not be preempted was offered by Rep. Chris Cannon and accepted by the committee by voice vote.

Section 201 - § 5361: Regulatory Definitions

What it does: These definitions apply to the new subchapter of title 31 (Money and Finance) that will be added by Section 201 of the bill. The key definition here is “financial transaction provider”, which is a participant in a payment system (designated by regulation), such as a credit card issuer, credit network, or money transmitting business. “Unlawful gambling” is defined as placing or receiving a bet or wager through a communication facility that violates any applicable Federal or State law in the place where the bet or wager is initiated or received. Other terms are defined by reference to the Wire Act.

Why it's there: “Financial transaction providers” are the persons subject to regulations prescribed under this subchapter. Because financial transaction providers are regulated, they are generally not subject to injunctions under the new Section 1085 of the Wire Act.

How it compares: The definitions are the same as the Leach bill reported by the Financial Services and Judiciary Committees, except the definition of “unlawful gambling” has been simplified to conform with the changes to the Wire Act.

Section 201 - § 5362: Prohibition on Acceptance of Any Financial Instrument for Unlawful Gambling

What it does: Prohibits gambling businesses from knowingly accepting credit, funds, bank instruments, or proceeds of any other form of financial transaction in connection with the

participation of another person in unlawful Internet gambling. This is called a “restricted transaction” according to the definitions section.

Why it's there: This language mirrors the financial prohibition in the Wire Act, except that financial transactions related to violations of State law are also prohibited under this section. This prohibition merely defines the types of transactions that are to be blocked or prevented; there is no additional criminal penalty under this subchapter.

How it compares: This language is identical to the Leach bill as reported from both committees, and similar to language from the Goodlatte bill as well. It is also the same as bills that have passed the House in previous Congresses.

Section 201 - § 5363: Policies and Procedures to Identify and Prevent Restricted Transactions

Subsections (a) and (b):

What it does: Requires the Secretary of the Treasury and the Federal Reserve Board, in conjunction with the U.S. Attorney General, to prescribe regulations within nine months requiring any payment system to establish policies and procedures reasonably designed to identify and block restricted transactions, or otherwise prevent restricted transactions from entering its system.

Why it's there: Given the technical and constantly changing nature of Internet and financial transactions, it is better to have the Treasury Department and Federal Reserve work out the details of procedures that will enable financial institutions to block restricted transactions. These regulations are to be reasonable in their design and in the burdens they place on financial systems, and offer alternative options for compliance.

How it compares: This section is exactly the same as the Leach bill as reported from the Financial Services committee. It is also similar to bills that passed the House in previous Congresses.

Subsections (c) and (d):

What it does: Provides persons operating financial systems with immunity from civil liability for blocking transactions that they reasonably believe are restricted transactions, or in reliance on the regulations promulgated by the Treasury Department and Federal Reserve. Though a financial institution *may* block additional transactions based on reasonable belief, it has no duty to do so, and may rely solely on the regulations to fully discharge its obligations.

Why it's there: Many financial transaction providers are already voluntarily blocking Internet gambling transactions, to the extent that they can identify the merchant as an Internet gambling business. This voluntary effort helps prevent uncollectible debt and enforce the law, but it leaves the companies vulnerable to civil liability in tort or contract. This provision offers immunity from such liability to financial institutions that block transactions because they are following the regulations, or otherwise have grounds for reasonable belief that the transaction is an unlawful Internet gambling transaction. For instance, it would be *reasonable* to believe that an online transaction between a credit card registered to a U.S. address and an offshore gambling website is illegal, regardless of the final content of regulations, and even though there is a small chance that the user of the credit card happens to be traveling in a country that permits such gambling. On the other hand, a financial transaction provider may

choose to rely on the regulations, relieving it of any duty to develop its own procedures for identifying restricted transactions.

How it compares: This is identical to the Leach bill as reported from the Financial Services and Judiciary Committees, and very similar to bills that passed in the House in previous Congresses.

Subsection (e)

What it does: The Federal functional regulators and the Federal Trade Commission are given the exclusive authority to enforce this section.

Why it's there: Regulatory requirements will be enforced against financial transaction providers in the usual manner in which financial regulatory requirements are enforced.

How it compares: This language is identical to the Leach bill as reported by both committees, and similar to the bills that passed the House in previous Congresses.

Section 301: Internet Gambling In or Through Foreign Jurisdictions

What it does: Provides that the U.S. Government should, when deliberating with foreign governments on money laundering, corruption, and crime issues, encourage cooperation in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation in the enforcement of this legislation, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering. It also requires the Secretary of the Treasury to submit an annual report to Congress on the deliberations between the United States and other countries on issues relating to Internet gambling.

Why it's there: This section has been included in most of the Internet gambling bills from the 106th Congress onward. It recognizes the need for international cooperation to strengthen enforcement efforts against illegal Internet gambling, especially as it relates to money laundering. The report required from the Secretary of the Treasury will help Congress to evaluate what additional actions might need to be taken in future years.

How it compares: This section is exactly the same as the bill that passed the House in the 107th Congress, and the Leach bill introduced and reported in the present Congress.